live in poverty in our own state of Wisconsin.

Despite successes in the welfare to work initiative, last year, a US Conference of Mayors study indicated that eighty-six percent of cities reported an increased demand for emergency food assistance. Thirty-eight percent of those people seeking food at soup kitchens and shelters were employed. This is an increase of fifteen percent since 1994. It is evident that, in many cases, minimum wage workers can not afford to feed themselves or their families.

Mr. President, no hard working American should have to worry about affording groceries, shoes for their kids, or medicines. The people whom the bill will help are not people who spend their money frivolously, these are the families who scrimp and save to provide their children with the necessities of life: shelter, food, clothes and an education.

In a recent study, The State of Working Wisconsin—1998, by the Center on Wisconsin Strategy, we find some troubling news regarding wages. Today, the Wisconsin median hourly wage is still 8.4% below its 1979 level. Since 1979, Wisconsin's median wage declined 50% faster than the 5.3 percent national decline over the same period. These numbers are, sadly, not Wisconsin specific. This is the situation all over the country.

I urge my colleagues to bring some respect and dignity to the federal minimum wage. America's labor force deserves a chance to be successful and we need to give them the tools. I urge them to support the Fair Minimum Wage Act of 1998. Its a vote in support of every full time worker hoping to make ends meet.

Mrs. BOXER. Mr. President, the minimum wage is about fairness. The minimum wage should be a fair wage that rewards people for an honest day's work.

This is the right time to provide fairness by increasing the minimum wage. Our budget is balanced and the economy remains fundamentally strong. We've created new jobs at an historically high pace of 250,000 per month. The inflation rate has averaged just 2.5 percent since 1993—the lowest rate since the Kennedy Administration—and the unemployment rate has fallen from over 7 percent in 1992 to 4.5 percent for the past two months.

However, as the economy rolls along, it is leaving behind working families. The benefits of this strong economy are not being enjoyed by lower wage workers.

In fact, according to a U.S. Conference of Mayors study, 38 percent of people seeking emergency food aid in 1996 held jobs—up from 23 percent in 1994. Low-paying jobs are the most-frequently cited cause of hunger today according to this survey.

People who are willing to work should not have to turn to a soup kitchen in order to feed their families. There is no better time than now to address the problem of fair wages in this country.

A full time minimum wage worker now earns just $10,712 per year—$2,600 below the poverty level for a family of three. To have the same purchasing power it had in 1968, the minimum wage today would have to be $7.33 an hour instead of $5.15.

Even where the current minimum wage is a little higher in my state—$5.75. The purchasing power of the wage is over $2.00 an hour lower than the purchasing power of the minimum wage in 1968. After adjusting for inflation, today's $5.75 minimum buys 26 percent less than it did in 1968.

Nationwide, 4.8 million families depend on the minimum wage for their sole source of income. Of the workers that would benefit from an increase, 60 percent are women—over 7 million women, and 57 percent are families in the bottom 40 percent of the income scale.

In my state alone, almost 10 percent of the workforce would benefit from an increase in the minimum wage—nearly 1.2 million Californians and their families.

Opponents of a minimum wage increase argue that minimum wage increases result in massive job losses. I believe—and the data prove—they are wrong.

The National Restaurant Association claims a study found that over 146,000 restaurant jobs were lost as a result of the 1996–97 minimum wage increases. In fact, the Bureau of Labor Statistics say that as of April 1998, 187,000 new restaurant jobs were created since the minimum wage increases in 1996.

The retail industry has many minimum wage jobs in California. Since September 1996, 97,000 retail jobs have been added in California.

The job numbers tell the story. We have increased the minimum wage to its current level of $5.15 per hour, yet the number of unemployed Americans has dropped consistently over the past six years. Since 1992, 3 million less Americans are jobless. In fact, according to the Bureau of Labor Statistics, 16.3 million jobs have been created since January 1993.

Clearly this is an issue of fairness. Everyone in this country deserves an honest, fair wage for a hard day's work. No one who is willing to work should have to take their children to a soup kitchen at night in order to feed them.

Senator KENNEDY's amendment would increase the minimum wage in two increments of 50 cents each—to $5.65 on January 1st, 1999 and to $6.15 on January 1st, 2000. After the first increase, a minimum wage earner would make about $11,700 annually. And after the second increase, a minimum wage worker would earn about $12,700 each year—still $600 below the poverty level.

Unemployment is at historically low levels. Job creation has boomed in the past six years. There is no better time to address this problem. The time for a modest increase in the minimum wage is now.

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3540

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 p.m. having arrived, there will now be 5 minutes for debate, equally divided, prior to a vote relative to the Kennedy amendment.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes 15 seconds.

At long last, the Senate is about to vote on raising the minimum wage. The Nation has enjoyed extraordinary prosperity in recent years. Unemployment and inflation are at their lowest levels in a generation. Interest rates are low, and the economy is strong and growing. But 12 million hard-working Americans are left out and left behind. They are minimum wage workers, and for them, the current prosperity is someone else's boom. Working 40 hours a week, 52 weeks of the year, minimum wage workers earn just $10,700 a year, $2,900 below the poverty level for a family of three.

A full day's work should mean a fair day's pay. But for these 12 million Americans, it does not. These hard-pressed Americans can barely make ends meet every month. Too often they are forced to choose between paying the light bill or the phone bill or the heating bill. An unexpected illness or family crisis is enough to push them over the edge.

Their plight is shocking and unacceptable. If this country values work as we say we do, we must be willing to pay these workers a decent wage. The wealthiest nation on Earth can afford to do better for these hard-working citizens, and today we have the opportunity to do so. We can raise the minimum wage.

Giving workers another 50 cents an hour may not sound like much, but it can make all the difference for these hard-working Americans. It can help buy groceries or pay the rent or defray the costs of job training courses at the local community college.

The minimum wage is a women's issue. It is a children's issue. It is a civil rights issue. It is a labor issue. It is a family issue. Above all, it is a fairness issue and a dignity issue. Raising the minimum wage is a matter of fundamental fairness and simple justice.

In a few moments, the Senate will have the opportunity to do more than pay lip service to these basic principles. If we believe in these ideals, we will vote to raise the minimum wage. No one who works for a living should have to live in poverty.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we know that only about 22 percent of the American people who are on minimum wage are people who have households to support. Almost every job on minimum wage is given to somebody who literally needs a job, would not otherwise have that opportunity and probably would have his or her job chances diminished if the minimum wage is increased. We found that to be the case year after year after year.

You cannot mandate increased labor costs without adverse impacts. What are those impacts?

Decreased employment opportunities, particularly for teenagers, and others, who are in the worst condition, with few skills and employment barriers. In large part, these reductions will be fewer jobs created, the elimination of certain services, such as bagging groceries or having them loaded in your car, or having services performed less frequently.

Higher prices for goods and services. The minimum wage is an ineffective antipoverty policy. Why? Because three-quarters of those earning the minimum wage are not heads of households or do not live in poor families—three-quarters of them. Most of these jobs are taken by people who are not from the poorest of the poor. Since the minimum wage increase cannot be targeted only to those who need it, the likelihood is that those with more experience, maturity, or skills will get or retain entry-level jobs and those who need a first-chance job the most are going to lose out.

Also, higher minimum wages stifle entry-level training opportunities. Workers have typically ''paid for'' their training and introductory work experience by working at entry-level wages. Mandating a higher minimum wage makes entry-level opportunities less available and our workforce less prepared for greater skills and opportunities down the line.

It is a myth that workers get ''stuck'' at minimum wages. Within a year, the average minimum wage earners get a 20 percent increase or even higher wage increase based on his or her greater skill level and experience.

Higher wages act as an incentive for some youth to leave school to take jobs.

So what is worse is that this adverse impact is for nothing. Those very individuals who need entry-level jobs the most are the ones most likely to be displaced by the increased competition for them. Frankly, hiking the minimum wage is not the only way to assist working Americans and those struggling to make ends meet. Let's work on some of these ideas.

Personally, I would like to raise people's paychecks by cutting their taxes. That would increase their paychecks without the risk that they might lose their jobs. And I think we can work together on education. We passed the A+ education bill. Let's tackle illiteracy, and let's do it this way rather than through this really untried procedure.

The PRESIDING OFFICER. The Chair announces all time has been used on the opponents' side, but the Senator from Massachusetts has 18 seconds remaining.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. If the Senator would like to use the remainder of his time, I will use leader time to conclude debate and move to table the amendment.

Mr. KENNEDY. I yield back and ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. All time is yielded back.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LOTT. Mr. President, I intend to move to table the amendment and ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. The majority leader has that right and may move to table, if he so wishes, after the statement.

Mr. LOTT. Mr. President, before I do that, I want to yield myself such time as I may consume out of leader time. I will be very brief.

Mr. President, when I became majority leader 2 and a half years ago, this issue was pending before the Senate and it had caused a lot of problems and some difficulties in trying to decide how to deal with it. After a period of weeks and months, we came to the conclusion that we did need a minimum wage increase at that point, but with a lot of small business tax provisions being included. And they helped to mitigate the effect on small business men and women and the jobs they create in particular.

But we had a minimum wage increase the year before last. We had a minimum wage increase last year. This increase, in my opinion, would be bad for the economy, bad for business, and bad for job creation.

I would like to just cite you two examples to think about. I have a son, first of all, who is a small businessman. And he employs people at the entry level, people who do not have high school educations—unwed mothers, people who are desperate to get a start, to get a job. And he gives them that opportunity. A lot of them go on to wind up being supervisors and owners of their own companies and create jobs. They live the American dream.

But I had occasion to hear comments from one lady—I believe she was from Marietta, GA—named Harriet Cane. She owns a Sweet Life Restaurant, which she describes as a very small dessert and luncheon cafe. It seats 45 people. As a result of the last increase in the minimum wage, she reduced her staff from 16 to 10, by attrition primarily, raised prices modestly, and had to increase her own hours on the job to 16 a day. And here is her exact quote:

I will tell you this, that if the next increase does go through, what will happen to my store. Bottom line: my doors will close. I've talked with my CPA. We've tried to be creative. We've tried to find a way to handle the increase in payroll that it would represent. As a little shop, I have no option. I just want the world and the communities to understand that this is a reality and not just rhetoric.

Also, a very impressive statement was given on that occasion when I heard Harriet Cane by a gentleman from Texas named Jose Cuevas. Jose Cuevas came with no prepared statement, but he spoke from the heart. He and his wife, he said, have lived the American dream. He is a Hispanic restaurant owner in south Texas who is approximately 44 years old. And he and his wife, at the ages of 22 and 20, saved money and worked really hard so they could buy their first store. This is what he had to say:

It became a dream. We now have four locations. We have $2.6 million worth of sales. We have seen a lot of people come through our door, and a lot of good people. They have all left something. They have all gone on to better things. I think of how this minimum wage will affect other people's dreams of owning their own companies, their own restaurants. I was fortunate enough that I and my wife worked side by side with two other employees until we earned a little bit more and could hire extra people. But at $6 or even $5.50 an hour, it will make it almost impossible. Our last raise in the minimum wage cost us $60,000 in labor costs.

In conclusion he said,

So I urge you to continue to fight the battle for us, because I believe it's true and right. America is built on small business owners, just like all of us that go out every day, work hard, and create jobs so that others could live the American dream like we have.

Mr. President, I think this is the wrong action at the wrong time. The people who will be hurt the most are the people that well-intentioned Senators really want to help, because they will wind up not getting an increase in the minimum wage, they will wind up with no job.

I urge the Senate to vote to table this amendment. I now move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment No. 3540 offered by the Senator from Massachusetts. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 278 Leg.]

YEAS—55

Abraham	Bennett	Burns
Allard	Bond	Campbell
Ashcroft	Brownback	Chafee

Coats	Hagel	Nickles
Cochran	Hatch	Roberts
Collins	Helms	Roth
Coverdell	Hollings	Santorum
Craig	Hutchinson	Sessions
DeWine	Hutchison	Shelby
Domenici	Inhofe	Smith (NH)
Enzi	Jeffords	Smith (OR)
Faircloth	Kempthorne	Snowe
Frist	Kyl	Stevens
Gorton	Lott	Thomas
Graham	Lugar	Thompson
Gramm	Mack	Thurmond
Grams	McCain	Warner
Grassley	McConnell	
Gregg	Murkowski	

NAYS—44

Akaka	Durbin	Lieberman
Baucus	Feingold	Mikulski
Biden	Feinstein	Moseley-Braun
Bingaman	Ford	Moynihan
Boxer	Harkin	Murray
Breaux	Inouye	Reed
Bryan	Johnson	Reid
Bumpers	Kennedy	Robb
Byrd	Kerrey	Rockefeller
Cleland	Kerry	Sarbanes
Conrad	Kohl	Specter
D'Amato	Landrieu	Torricelli
Daschle	Lautenberg	Wellstone
Dodd	Leahy	Wyden
Dorgan	Levin	

NOT VOTING—1

Glenn

The motion to lay on the table the amendment (No. 3540) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3602

The PRESIDING OFFICER. Under the previous order, there will now be 10 minutes equally divided on amendment No. 3602 to amendment No. 3559.

The Senate will come to order.

The Senator from Wisconsin is recognized for 5 minutes.

Mr. FEINGOLD. Thank you, Mr. President.

Have the yeas and nays been ordered on these two amendments, Mr. President?

The PRESIDING OFFICER. They have not been ordered on the pending amendment.

Mr. FEINGOLD. Mr. President, I ask for the yeas and nays on both of my amendments.

The PRESIDING OFFICER. Is there objection to the request of ordering the yeas and nays on the next two amendments offered by the Senator from Wisconsin?

Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, the original version of S. 1301 would have made a debtor's attorney responsible for the panel trustee's costs and fees if the attorney lost a 707(b) motion brought by the trustee—not if the filing was made in bad faith, not if the filing was frivolous, but simply if he or she lost the motion.

Fortunately, an amendment was accepted at the Judiciary Committee markup which would make the debtor's attorney liable only if he or she was ''not substantially justified'' in filing the petition. Even this standard, however, is untenable.

The opponents of the Feingold-Specter amendment argue that debtors attorneys are notoriously bad actors who abuse the bankruptcy system. No credible evidence, however—beyond an unsubstantiated story here and an unsubstantiated story there—has been offered to support the proposition that debtors attorneys are more likely to act in bad faith than any other type of attorney.

Why then would we allow this bill to contain a provision which applies a stricter standard of conduct to consumer debtors' attorneys than to any other type of attorney—a provision which is, as pridefully noted by the opponents of my amendment, designed to punish debtors' attorneys?

I have heard from bankruptcy judges in my home State of Wisconsin and they strongly object to the premise that debtors' attorneys are by any measure less admirable or honest than other types of attorneys. Moreover, they believe that this provision of the bill is fundamentally wrong and endangers debtors' access to the system.

The conduct of consumer debtors' attorneys should meet the standards set for all attorneys in Federal Civil Rule of Procedure 11, which is incorporated in Federal Rule of Bankruptcy Procedures 9011.

Every other fee-shifting provision in Federal law which holds the attorney liable require affirmative wrongdoing by the attorney. With or without my amendment—indeed, with or without this bill—if a debtor's attorney brings a ''frivolous'' or ''improper'' Chapter 7 filing—the court can order sanctions against that attorney.

Let me be clear—under current law, debtors' attorneys can already be fined if they act in bad faith. There is simply no legitimate basis for a different and more punitive standard that only applies to debtors' attorneys in bankruptcy proceedings.

Should not the purpose of this bill be to rid the bankruptcy system of abuse, not to punish a particular type of attorney? The basic premise of this bill—the fundamental tool it uses to weed out abuse—is the 707(b) motion. That is, the motion which is filed by the panel trustee when she feels that the debtor is abusing the system.

To supposedly encourage a trustee to file such a motion, this bill would award her costs and fees only when the debtor's attorney's actions were not substantially justified. Under the Feingold-Specter amendment, the trustee would be rewarded for her efforts whenever she wins a 707(b) motion.

Let me ask you—if you were a panel trustee charged with the duty of protecting the integrity of the bankruptcy system and your primary tool for doing so was the 707(b) motion, would you be more likely to file such a motion when you got paid whenever you won such a motion or only when the debtor's attorney was demonstrated to have been not substantially justified?

Before you answer, let me ask you one more question. What if, before you could get paid—as under the current bill—you, a panel trustee—not the court or an independent third party—also had to incur the additional time and cost of bringing and arguing another motion to prove that the debtor's attorney was not substantially justified?

The answer to these questions is clear. If you were a panel trustee you would have a stronger incentive to bring a 707(b) motion—that is, a stronger incentive to rid the bankruptcy system of abuse—under the Feingold-Specter amendment than you would under the current language of the bill.

So, the Feingold-Specter amendment seeks to maintain the incentive for trustees while preserving a debtor's access to justice and representation. It does so by making the trustee's fees and costs an administrative expense under Section 503(b) if the trustee is successful in her 707(b) motion to convert the case into Chapter 13. If the court dismisses the Chapter 7 filing, the debtor would be required to pay the trustee's cost and fees.

Your vote on the Feingold-Specter amendment comes down to this—if you want to muddle the system with needless additional hearings and to strike a mean-spirited, unfounded blow against debtors attorneys, vote against our amendment; if on the other hand, you want to rid the bankruptcy system of abuse in the most equitable and efficient manner, then vote for our amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time? The Senator from Iowa controls 5 minutes in opposition to the amendment. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume at this point.

The bill that is before us, and it is reported by the Judiciary Committee, penalizes lawyer misconduct. I think these penalties are very fair. They are very narrowly focused. Of course, penalties are very necessary. Many lawyers who specialize in bankruptcy view bankruptcy as an opportunity to make big money for themselves. This profit motive causes bankruptcy lawyers to promote bankruptcy as the only option, even when a financially troubled client might obviously have the ability to repay some debt.

This profit motive creates a real conflict of interest where bankruptcy lawyers push people into bankruptcy who do not belong there, and they do it because they get paid up front. I think that any reasonable person would say that lawyers who file bankruptcy cases which are not substantially justified ought to be required to help defray the costs of their frivolous cases. That is all my bill does. Senator FEINGOLD's amendment would gut this reasonable effort to control the bankruptcy bar, which is seriously out of control.

The Consumer Bankruptcy Reform Act contains reasonable lawyer misconduct penalties which will cause lawyers to think twice before they, willy-nilly, cart somebody into chapter 7 and pocket a nice profit in the process. Some bankruptcy lawyers, in their rush to turn a profit, operate what are known as bankruptcy mills—nothing more than a processing center that happens to be for bankruptcy. There is little or no investigation done as to whether an individual actually needs bankruptcy protection or whether or not a person is able, at least partially, to repay their debts.

Recently, one of these bankruptcy attorneys from Texas was sanctioned by a bankruptcy court. The practices of the bankruptcy mills are so deceptive and so sleazy that last year the Federal Trade Commission went so far as to issue a consumer alert, warning consumers of misleading ads that promise debt consolidation. So I think there is a widespread recognition that bankruptcy lawyers are preying on unsophisticated consumers.

Yesterday I spoke about the bankruptcy lawyer who had written a book. I had this chart up. I spoke about this bankruptcy lawyer who had written this book entitled, ''Discharging Marital Obligations in Bankruptcy.'' This author, a bankruptcy lawyer, actually said that he is going to counsel you on how to avoid your obligations to pay defense costs, alimony, and child support. So it is all about how high-income people can get out of paying child support and alimony.

I think it is outrageous that bankruptcy lawyers are helping deadbeats cheat divorced spouses out of alimony and children out of child support, so that is why we want to vote this amendment down. I think my colleague, Senator KYL, wanted time.

I yield the remainder of my time to Senator KYL.

The PRESIDING OFFICER. There is currently 1 minute 20 seconds remaining.

Mr. KYL. Mr. President, I thank the Senator from Iowa.

The key point here is to simply hold the attorney responsible for the costs of a hearing. That is all we are talking about. It is either going to be the attorney or it is going to be the people who are owed money in a bankruptcy, or even the debtor, to be responsible for the costs of that hearing in the event the attorney has made a wrong filing here, a filing that was not substantially justified. So, if the attorney can establish that what he did was substantially justified in putting his client into chapter 13 bankruptcy as opposed to chapter 7, then he has no responsibility here and would have no liability for the costs of the hearing. But if it turns out that he was not substantially justified in doing that, then this would permit the court to assess the cost of bringing the motion and having the hearing against that lawyer. That is all we are talking about here.

In view of the fact that the National Bankruptcy Commission has been very concerned about these bankruptcy mills, this is a legitimate concern and a way to avoid this kind of mistake from occurring. It puts the responsibility where the responsibility ought to lie. I support the position of the Senator from Iowa in urging opposition to the Feingold amendment.

Mr. GRASSLEY. Mr. President, I move to table the Feingold amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table Feingold amendment No. 3602. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The result was announced—yeas 57, nays 42, as follows:

[Rollcall Vote No. 279 Leg.]

YEAS—57

Abraham	Domenici	Lugar
Allard	Enzi	Mack
Ashcroft	Faircloth	McCain
Bennett	Frist	McConnell
Bond	Gorton	Murkowski
Breaux	Gramm	Nickles
Brownback	Grams	Reid
Bryan	Grassley	Roberts
Burns	Gregg	Roth
Byrd	Hagel	Santorum
Campbell	Hatch	Sessions
Chafee	Helms	Smith (NH)
Coats	Hutchinson	Smith (OR)
Cochran	Hutchison	Snowe
Collins	Inhofe	Stevens
Coverdell	Jeffords	Thomas
Craig	Kempthorne	Thompson
D'Amato	Kyl	Thurmond
DeWine	Lott	Warner

NAYS—42

Akaka	Ford	Lieberman
Baucus	Graham	Mikulski
Biden	Harkin	Moseley-Braun
Bingaman	Hollings	Moynihan
Boxer	Inouye	Murray
Bumpers	Johnson	Reed
Cleland	Kennedy	Robb
Conrad	Kerrey	Rockefeller
Daschle	Kerry	Sarbanes
Dodd	Kohl	Shelby
Dorgan	Landrieu	Specter
Durbin	Lautenberg	Torricelli
Feingold	Leahy	Wellstone
Feinstein	Levin	Wyden

NOT VOTING—1

Glenn

The motion to lay on the table the amendment (No. 3602) was agreed to.

Mr. GRAMM. Mr. President, I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3565

The PRESIDING OFFICER. Under the previous order, there will now be 5 minutes equally divided on Feingold amendment numbered 3565.

The Senator from Wisconsin.

Mr. FEINGOLD. Ironically, bankruptcy is the only Federal civil proceeding in which a poor person cannot file in forma pauperis.

What this means, in any other Federal civil proceeding you can file a case without paying filing fees if the court determines you are unable to afford the fee; but in bankruptcy, you either pay the filing fee or are denied access to the system. That is right, the bankruptcy system—which is by definition designed to assist those who have fallen on hard times—is unavailable to the poorest of the poor.

This prohibition against debtors filing in forma pauperis is a clear obstacle to their efforts to gain access to justice. The current fee is $175; $175 is roughly the weekly take-home pay of an employee working a 40-hour week at the minimum wage.

I think it is unrealistic and unreasonable to expect an indigent in this case to raise such a fee simply to enter the system.

The PRESIDING OFFICER. The Senator has 1 minute 30 seconds remaining.

Mr. FEINGOLD. Given the fact that I have such high regard on behalf of the leader of this bill on our side, Senator DURBIN, I yield the remaining time to Senator DURBIN who will further speak in favor of the amendment.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I thank the Senator from Wisconsin. I rise in support of this amendment. When you have people who are so dirt poor that they can't come up with the $175 filing fee, we usually say in civil actions that we are going to waive the fee in court. For some reason, that waiver is not in the law in bankruptcy. It certainly should be. People wouldn't be coming to the bankruptcy court were they not in dire straits.

I support the Senator from Wisconsin because this has been tried successfully. It does not result in a mad dash to the courthouse by people who otherwise would not file for bankruptcy.

Now, the milk of human kindness curdled a few moments ago on the Senate floor when it came to bankruptcy lawyers, and the poor folks didn't do too well a few minutes ago when it came to minimum wage. Please stop and think about this for a minute. The poorest of the poor, coming to bankruptcy court trying to turn their lives around, want the same kind of treatment people get in all other civil suits. That is not unreasonable.

Mr. GRASSLEY. I yield all the time on this side to the Senator from Alabama.

Mr. SESSIONS. Mr. President, this Feingold amendment is directly contrary to the purpose of the bill that Senator GRASSLEY has worked so hard for. It requires no fee for filing under chapter 7, where the debtor wipes out all his debts. However, the amendment does require a fee under chapter 13, where the debtor pays back a portion of his debt. Therefore, it would encourage filings under chapter 7, when we

believe more people should file under chapter 13.

This Congress has considered this issue before and rejected it. The National Bankruptcy Commission just completed a long study of bankruptcy and did not call for the elimination of this fee. The United States Supreme Court in 1973 squarely held that it is constitutional. The bankruptcy system should discourage frivolous filings.

Furthermore, this amendment provides no standard for the judge to decide who in bankruptcy ought to pay and who ought not to pay. And, in addition to that, it would clog the courts with multiple hearings regarding who should pay the $160 filing fee. In addition, bankruptcy law currently allows filing fees to be paid in four installments. When a person files bankruptcy, they are able to stop paying all of their debt. Debtors are able to pay the filing fee because all other obligations have been tolled under the automatic stay.

This amendment will result in additional court hearings that distract the bankruptcy court from its primary purpose. This practice will be encourage filings under chapter 7 when filing under chapter 13 would be more appropriate. People who can pay a portion of their debt ought to be accountable for that amount.

I believe that this amendment will cost millions. In fact, based on the number of filings last year, we could be talking about $100 million in costs.

Thank you, Mr. President.

Mr. GRASSLEY. Mr. President, we yield back our time.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The question is on agreeing to amendment No. 3565.

Mr. GRASSLEY. Mr. President, I move to table the Feingold amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Iowa to lay on the table the amendment of the Senator from Wisconsin. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The result was announced—yeas 47, nays 52, as follows:

[Rollcall Vote No. 280 Leg.]

YEAS—47

Abraham	DeWine	Hutchinson
Allard	Enzi	Hutchison
Ashcroft	Faircloth	Inhofe
Bennett	Frist	Kempthorne
Bond	Gorton	Kyl
Brownback	Gramm	Lott
Burns	Grams	Lugar
Campbell	Grassley	Mack
Coats	Gregg	McCain
Cochran	Hagel	McConnell
Coverdell	Hatch	Murkowski
Craig	Helms	Nickles
Roberts	Shelby	Thompson
Roth	Smith (NH)	Thurmond
Santorum	Stevens	Warner
Sessions	Thomas	

NAYS—52

Akaka	Durbin	Lieberman
Baucus	Feingold	Mikulski
Biden	Feinstein	Moseley-Braun
Bingaman	Ford	Moynihan
Boxer	Graham	Murray
Breaux	Harkin	Reed
Bryan	Hollings	Reid
Bumpers	Inouye	Robb
Byrd	Jeffords	Rockefeller
Chafee	Johnson	Sarbanes
Cleland	Kennedy	Smith (OR)
Collins	Kerrey	Snowe
Conrad	Kerry	Specter
D'Amato	Kohl	Torricelli
Daschle	Landrieu	Wellstone
Dodd	Lautenberg	Wyden
Domenici	Leahy	
Dorgan	Levin	

NOT VOTING—1

Glenn

The motion to lay on the table the amendment (No. 3565) was rejected.

Mr. FEINGOLD. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. BREAUX. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FEINGOLD. I ask unanimous consent that the yeas and nays be vitiated on the underlying amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question now occurs on agreeing to amendment No. 3565.

The amendment (No. 3565) was agreed to.

AMENDMENT NO. 3610

The PRESIDING OFFICER. Under the previous order, there will now be 10 minutes for debate, equally divided, on the Reed amendment. The Senator from Rhode Island is recognized for 5 minutes.

Mr. REED. Mr. President, I yield myself such time as I may consume.

Mr. President, the underlying legislation that we are considering today will allow a creditor to request a bankruptcy judge to move a petition in bankruptcy from chapter 7 to chapter 13. As we all realize, in chapter 7, a debtor may fully discharge his debts, and in chapter 13, there is an obligation to partially pay one's debts.

The focus of this legislation is on the debtor. There are two conditions which the creditor must show: The creditor must show either the individual debtor has at least enough assets to pay 30 percent of the debts or that the debtor has acted in bad faith in applying for chapter 7 liquidation.

I believe this focus exclusively on the debtor misses half of the equation. The other important half of the equation is the behavior of the creditor. My amendment explicitly requires the bankruptcy judge to consider the behavior of the creditor, whether that creditor acted in good faith in the extension of credit.

We all know there has been a significant increase in bankruptcy filings, but what we frequently overlook is the fact that there has been an extraordinary increase in credit extension. In 1986 through 1996, that 10-year period, filings increased by 122 percent, but revolving consumer credit increased 238 percent in that same period. As a result, we have had a situation where much of this credit extension has been done with very poor underwriting standards, a situation in which the companies themselves might very well anticipate that the debtor could not handle the debt.

Those companies that act recklessly and unscrupulously should not have the option to request that a debtor be thrown into chapter 13 from chapter 7. As a result, I believe it is incumbent upon the bankruptcy judge to look explicitly at the issue of the good faith of the creditor.

This is not just a question of the volume of credit that has been extended; this is the proliferation of solicitations. Each year, 2 billion credit solicitations are made in this country, many of them without any concern of the ability of the debtor ultimately to pay. We don't need a test to establish this fact. We just have to sit home on a Saturday and at about 10 o'clock, you get the first call from a credit card company. Then at 10:30, you get the second call. At 11, the mail comes and you get two or three solicitations, and it goes all the way through the evening.

What I want to see, and what the amendment requires, is if there is a consideration to move a debtor from chapter 7 to chapter 13, the judge should be able to apply a good-faith standard when reviewing the activities of the creditor. This establishes balance, this establishes a strong presumption that both sides must be looked at in terms of this rather unique and novel approach to the bankruptcy code. It is well within the expertise of the banking judge to make this determination.

I simply conclude by saying that this amendment has the strong support of the Consumer Federation of America and Consumers Union. This is an opportunity to vote with consumers with regard to this legislation.

I now retain the remainder of my time but also ask at this time for the yeas and nays.

The PRESIDING OFFICER (Mr. GORTON). Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I oppose the amendment. Under the provision, in any 707(b) case brought by a creditor, the court would consider whether the creditor had used good faith in the extension of credit. This determination necessarily would involve looking at underwriting decisions.

The bankruptcy court shall not be asked to interfere in the complicated process of making credit underwriting decisions. This is particularly true when current underwriting practices are quite successful, with an average of 95 to 97 percent of consumer credit extended today repaid on time.

Mr. President, this amendment permits new uncontrolled and virtually unlimited inquiries into creditor conduct. It encourages complicated and involved discovery and burdensome court proceedings. It introduces unwarranted defenses to strong enforcement of the needs-based provisions of S. 1301, this bill.

The amendment permits a debtor to avoid repaying all his creditors by attacking the good faith of any creditor who brings a motion to enforce the needs-based provisions. And the amendment has no standard for what is good faith. So this is a killer amendment.

Moreover, S. 1301 already contains numerous provisions to make sure creditors are acting appropriately. As I have noted in my previous remarks, this is a well balanced bill that is a combination of months and months of deliberations and cooperation between Senators GRASSLEY and DURBIN and other members of the Senate Judiciary Committee. They, along with other members of the Judiciary Committee, have done a fine job in ensuring that this bill is a fair bill. This balanced and broadly supported legislation not only curbs abuses of the bankruptcy system but also provides unprecedented consumer protections.

Let me begin by saying being a creditor and winding up in bankruptcy court to collect unpaid bills is not a desirable situation for any creditor. Creditors who deal with debtors in bankruptcy, even in the best of circumstances, are likely to recover only pennies on every dollar they are owed.

In any event, S. 1301 already contains nine provisions with rather severe penalties to creditors for improper behavior. We have given due consideration to these concerns.

First, if a creditor brings a motion to dismiss a chapter 7 case and fails, the debtor gets attorney's fees and costs if the creditor was not substantially justified or if the creditor filed the motion in an effort to coerce the debtor.

Second, if a creditor unreasonably refuses a debtor's offer to work out a repayment schedule, the creditor is barred from asserting any claim of nondischargeability or any claim of denial of discharge.

Third, if a creditor willfully violates the automatic stay, the creditor pays the debtor's attorney's fees, actual damages, and punitive damages, if appropriate. We have really gone a long way here.

Fourth, if a creditor fails to comply with the requirements for a reaffirmation agreement, the court can order heavy sanctions and penalties.

Fifth, the legislation will make it much harder for creditors to get determinations of nondischargeability. Only false representations by a debtor that are considered ''material'' will be actionable. If a creditor makes an unsuccessful claim of nondischargeability or denial of discharge, the creditor is liable for the debtor's attorney's fees, costs, and punitive damages, if the creditor's claim is not substantially justified. The reverse is not true. If the creditor wins the nondischargeability proceeding, the debtor does not have to pay the creditor's attorney's fees. So it isn't reversible.

Sixth, if a creditor willfully violates the postdischarge injunction, the creditor is liable for minimum damages of $5,000 and attorney's fees and costs, with the possibility of treble damages.

Seventh, if a creditor fails to comply with Truth in Lending Act requirements for certain mortgage loans, the creditor's claim will not be recognized or paid in bankruptcy. For instance, if a creditor does not provide for certain disclosures, or fails to meet the requirements of the act, even if it is a technical violation, the creditor's claim will be denied in bankruptcy. In other words, the debt, both principal and interest, will be completely forgiven. These new penalties are in addition to those penalties already present in the Truth in Lending Act itself.

Eighth, if a creditor willfully fails to credit payments to a bankruptcy plan, the creditor is liable for minimum damages of $5,000 and attorney's fees and costs, with the possibility of treble damages.

And ninth, if a creditor's proof of claim is disallowed or reduced by 21 percent or more, the debtor gets attorney's fees and costs, and so forth.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. As you can see—I hope we can vote down this amendment—a lot of hard work has been put into this.

Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. There is time remaining.

Mr. REED. How much time is remaining?

The PRESIDING OFFICER. Two minutes 6 seconds.

Mr. REED. Thank you.

I applaud all the consumer protections that the Senator from Utah has listed, but I would like to add one more. I would like to add, along with the Consumers Union and the Consumer Federation of America, the protection of looking at the good-faith operation of a creditor who is demanding that a debtor be placed from chapter 7 into chapter 13.

With respect to the standard, my standard is as equally well defined as the bad-faith standard that exists today within the legislation, because good faith and bad faith are something that the banking judge should be able to determine, and it does not require an elaborate searching through of underwriting policies and looking through documentation and going around the country.

What it does require is that that trier of fact, that bankruptcy judge, determine whether or not the creditor has abused the relationship, either by intimidation or deceit. All these things would rise to the level of a lack of good faith. I suggest very strongly the bankruptcy judge can do that, and should do that in this context.

Mr. President, I yield the remainder of my time to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. How much time is remaining?

The PRESIDING OFFICER. Fifty-two seconds.

Mr. DURBIN. I rise to support this amendment because I think it makes a good bill even better. We are trying to stop the abuses in bankruptcy. We say if you want to file for bankruptcy and you do not have good cause, we are going to throw you out of court. We might penalize you, and we are going to do the same thing to your attorney. So from the debtor side—the person who owes the money—it is a pretty tough standard.

What the Senator from Rhode Island says is, let's have a standard as well for the collection agencies and the creditors who are not treating people fairly. I think we want to eliminate all abuses in the bankruptcy court, not just by the debtors and their attorneys, but by the creditors, too. What the Senator from Rhode Island suggests is fairness and balance. It gives the court the ability to look at strong-arm tactics used by collection agencies and creditors to the detriment of debtors who are trying to get out of debt.

VISIT TO THE SENATE BY MEMBERS OF THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

Mr. LOTT. Mr. President, during this vote, I would like to urge Members of the Senate to go to the back of the Chamber and visit with our special guests we have here—the Prime Minister of the Republic of Singapore, Goh Chok Tong, the Foreign Minister, and their Ambassador to the United States. We welcome them to the United States and to the Senate Chamber.

[Applause.]

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3610

The PRESIDING OFFICER. All time has expired.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?